

IN THE SUPREME COURT
OF THE
UNITED STATES

SUPREME COURT, U. S.
FILED

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MICHAEL ROBAK, JR., C.

October Term, 1972

No. 71-6278

CONDRADO ALMEIDA-SANCHEZ,
Petitioner,

vs.

UNITED STATES OF AMERICA
Respondent.

MOTION FOR LEAVE TO FILE

BRIEF AMICUS CURIAE
and
BRIEF AMICUS CURIAE

LUKE MCKISSACK
Attorney at Law
Suite 521
6430 Sunset Boulevard
Hollywood, California
90028
[213] 466 7331

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and United States v. Freed

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MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF AND BRIEF AMICUS CURIAE

Attorney, Luke McKissack hereby respectfully moves for leave to file the attached brief Amicus Curiae in support of Petitioner in this case. The undersigned is a member of the bar of this court, who has previously appeared as Amicus Curiae on several occasions such as the recent McGautha v. California death penalty case (402 U.S. 183, 91 S. Ct. 1454 (1971)), and has argued before this body in Gilbert v. California, (388 U.S. 263, 87 S. Ct. 1951 (1967)) and United States v. Freed & Sutherland (401 U.S. 601 91 S. Ct. 1112 (1971)).

The interest of the Amicus Curiae in the present case arises from the fact that I am a party to a case presently pending in the Court of Appeals for the Ninth Circuit, in which the same issue is squarely

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The interest of the Amicus Curiae in the present case arises from the fact that I am a party to a case presently pending in the Court of Appeals for the Ninth Circuit, in which the same issue is argued

presented. (United States v. Ricardo
Pablo Barron, No. 11904 Criminal). A
decision on that issue, the constitutional
validity of the border checkpoint search
under 8 U.S.C. 1357(a) and 8 C.F.R. §287.1
(a)(2), will be clearly dispositive of my
case. The location of the checkpoint
search in Barron (at San Clemente on Highway
101 or Interstate 5) is far more frequently
encountered than the one in the Almeida-
Sanchez case presently before the Court,
and hence, reveals a more pervasive
pattern of conduct.

The Oceanside division of the Califor-
nia Highway Patrol indicated that upwards
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Over one month's time, approximately
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We are further presenting novel arguments not included in Petitioner's Opening Brief, which could prove helpful in arriving at a final determination of the important issues involved. The Solicitor General has a copy of our brief and has until August 18, 1972, within which to reply to Petitioner's Opening Brief which has not yet been printed.

Indeed, the most reasoned and expedient determination of all questions in Almeida and Barron demands consideration of the arguments in the following Brief Amicus Curiae.

Respectfully submitted,
Luke M. McKissack
LUKE MCKISSACK

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LUKE MCKISSACK

NO APPARENT REASON EXISTS
I

THE EXCEPTION ALLOWING WARRANTLESS SEARCHES WITHOUT PROBABLE CAUSE UNDER 8 UNITED STATES CODE § 1357(a) AND DEFINED BY REGULATION 8 C.F.R. § 287.1(a) (2) CONTRAVENES PROTECTIONS AFFORDED BY THE FOURTH AMENDMENT. We are faced with a rule in the United States 9th Circuit Court of Appeals, which stands in conspicuous opposition to the constitutional protections generally provided by the Fourth Amendment. Those protections threatened by this rule are based on probable cause, are "...per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well delineated exceptions" (Katz v. United States, 389 U.S. 347, 357 88 S. Ct. 507, 514, [1967])). The exception challenged here is not well delineated, nor have the cases demonstrated any rational grounds behind its establishment.

THE EXCEPTION ALLOWING WARRANTLESS SEARCHES
WITHOUT PROBABLE CAUSE UNDER A UNITED STATES

CASE 2:13-15 AND DEFINED BY REGULATION
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LOWER COURT ERRED IN BASING

ITS RULING UPON THIS DISTINCTION.

Petitioner contends that absent any showing

that 1. an international boundary was

crossed, and 2. that he fled the border

inspection or was under surveillance, the

search without probable cause was not, and

cannot be legitimized as a border search.

Under the authority of 18 U.S.C. 1357,

Immigration and Naturalization Service

officers have the right to search auto-

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Cervantes v. United States, 263 F.2 800 (9th Cir. 1959). However, once it has been established that an individual has previously crossed an international border and is not presently under surveillance or pursuit, a search conducted seventy miles from the Mexican border, as in the case at bar, does not constitute a border search and is not justified absent probable cause. Thus, the Ninth Circuit Court of Appeals has held that the search of an automobile seventy miles from the nearest port of entry cannot be justified as a border search, but must be supported by probable cause. Cervantes v. United States, supra. In the Cervantes case, a Federal customs investigator for the United States Customs Service had received information on two occasions from an informant describing the defendant and his several entries into Mexico for purchases of narcotics. Moreover,

Mexico for purchases of narcotics. Moreover defendant and his several entries into occasions from an informant describing the Service had received information on two investigator for the United States Customs in the Cervantes case, a Federal customs case. Cervantes v. United States, supra. search, but must be supported by probable entry cannot be justified as a border seventy miles from the nearest port of use held that the search of an automobile. Thus, the Ninth Circuit Court of Appeals has is not justified absent probable cause. at bar, does not constitute a border search from the Mexican border, as in the case. Inasmuch, a search conducted seventy miles out is not presently under surveillance or previously crossed an international border has been established that an individual has (9th Cir. 1959). However, since it has Cervantes v. United States, 263 F.2 800

the investigator observed the defendant and his vehicle in Tijuana, Mexico, and, after checking defendant's license number, determined that the defendant had previous narcotics convictions, including one for unlawful transportation of narcotics into the United States. This information was given to border inspectors and the investigator requested that the automobile and its occupants be thoroughly searched. On that same date, defendant crossed the international border at Tijuana without being searched by the border inspectors and proceeded north on U.S. 101 toward Los Angeles. Federal Immigration agents at San Clemente, being in possession of the aforedescribed information, stopped the defendant and, after searching the defendant and the vehicle, arrested him for importing, transporting and concealing narcotics. The Ninth Circuit, in reversing defendant's conviction for lack of probable cause to stop and search defendant's vehicle at San Clemente, included the following remarks in a footnote regarding the Government's contention that the court could sustain the search as a border search:

"An authorized federal border official may, upon unsupported suspicion, stop and search persons and their vehicles entering this country. 19 U.S.C.A. Sec. 482. *Carroll v. United States*, supra, 267 U.S. at pages 153-154, 45 S. Ct. at page 285. But after entry has been completed, a search and seizure can be made only on a showing of probable cause. *Landau v. United States*, 2 Cr. 82 F. 2d 285, 286; *United States v. Lee Hoes Hoy*, D. C. 105 F. Supp. 517, 523. The record does not reveal the elapsed time between Cervantes' re-entry into the

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Ninth Circuit, in reversing defendant's

United States on December 3, 1955, and conviction for lack of probable cause to his arrest at San Clemente. However, stop and search defendant's vehicle at San Clemente, included the following remarks in a footnote regarding the Government's contention that the court could sustain the search as a border search:

"An authorized federal border official stopped at San Clemente, in connection may, upon unsupported suspicion, stop and search persons and their vehicles entering this country. 19 U.S.C.A. Sec. 482. Carroll v. United States, supra, 267 U.S. at pages 153-154, 45 S. Ct. at page 285. But after entry

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may, upon unsupported suspicion, stop
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United States on December 8, 1955, and his arrest at San Clemente. However, we take judicial notice of the fact that San Clemente is more than seventy miles from the nearest port of entry from Mexico. There is no indication in the record that Cervantes had stopped at San Clemente in connection with a pursuit. Insofar as the record reveals, therefore, his entry had been completed prior to the time he reached San Clemente, and the government does not contend otherwise."

Cervantes v. United States, 263 F.2d 800, 803, n.5. [Emphasis added.]

It is submitted that in the case at bar, absent independent probable cause for detaining and searching defendant's vehicle, any evidence sought to be introduced be suppressed as not incident to a valid international border search. See, also,

United States on December 8, 1955, and
his arrest at San Clemente. However,

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Cervantes v. United States, 253 F.2d

800, 803, n.5. (Emphasis added.)

It is submitted that in the case at bar,

no independent probable cause for

detaining and searching defendant's vehicle,

any evidence sought to be introduced be

expressed as not incident to a valid

international border search. See, also,

United States v. Hortze, 179 F. Supp. 913,
918 (D.C. Calif. 1959). To conclude
otherwise, not only the Petitioner, but
all persons who travel northwest to other
parts of California would by virtue of
travelling on Highway 78 or all major high-
ways, surrender their Constitutional protec-
tion against unreasonable searches and
seizures; and this is true whether or not
the persons involved ever crossed the border.
Such an argument is certainly fatuous and
invalid. Justice Browning, in his dissenting
opinion in the case at bar, vehemently
shares our continuing confusion over the
attempt to distinguish between searches
for contraband and searches for aliens.
"If a reason exists for distinguishing
searches for aliens from searches for
merchandise, no one - including this
court - has yet suggested what it might
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United States v. Hottel, 179 F. Supp. 213,

214 (D.C. Calif., 1959). To conclude

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"If a reason exists for distinguishing

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be. Nothing in the words of the

Constitution supports the distinction, and no one suggests that the public interest in excluding inadmissible aliens is greater than that in excluding narcotics and other contraband" United States v. Almeida-Sanchez, 452 F.2d 459 (1971) § 1357(a) which allows

We, therefore, continue to assert the applicability of Fourth Amendment protections to the present case, despite the absurd application of 8 U.S.C. §1357(a) which threatens to deny those protections. If the rational distinction which Judge Browning as well as Petitioner fail to find, exists, we demand to know what it is before abandoning the assertion of rights Constitutionally protected by the Fourth Amendment. 403 U.S. 443, 91 S. Ct. 2022, limited

the Robinson rule which allowed warrantless searches of vehicles (with probable cause) when seized. This undeniably

Constitution supports the distinction
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nations and other countries. United
States v. Almida-Sanchez, 452 F.2d 1316

(1971)

The Court continues to assert the
necessity of Fourth Amendment protection
in the present case, despite the shared
application of 8 U.S.C. §1325(a) which
intends to deny those protections. If

the rational distinction which under
lies as well as a petitioners fail to find
exists, we demand to know what it is.

Before abandoning the assertion of rights
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Amendment.

II

THERE IS NO RATIONAL JUSTIFICATION FOR ALLOWING 8 U.S.C. § 1357(a) TO SERVE AS A BLANKET EXCEPTION TO THE FOURTH AMENDMENT REQUIREMENT OF PROBABLE CAUSE.

In further stressing the absurdity of 8 U.S.C. § 1357(a) which allows warrantless searches without probable cause, appellant urges the court to note that the judicial trend is in the opposite direction, i.e., toward a narrowing of exceptions which allow warrantless searches toward strict enforcement of the probable cause requirement, and to a narrowing of the scope of searches to eliminate the obtrusive "exploratory" search.

For example, Coolidge v. New Hampshire, (1971) 403 U.S. 443, 91 S. Ct. 2022, limited the Chambers rule which allowed warrantless searches of vehicles (with probable cause) in motion when seized. This undeniably

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In further assessing the absurdity

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 appellant urges the court to note that the
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For example, Coolidge v. New Hampshire

403 U.S. 443, 91 S. Ct. 1002, 1971

the Chambers rule which allowed warrantless

searches of vehicles (with probable cause)

in motion when seized. This undeniably

represents the court's wish to limit the exception of the "movable auto" exigency. Yet, under 8 U.S.C. § 1357, and under the guise of a search for "aliens", any auto within 100 miles of an external boundary could be searched without a warrant in possible violation of Coolidge, and without probable cause in violation of the Supreme Court mandate in both Coolidge and Chambers. Section 1357 potentially renders such cases meaningless.

Further, the probable cause requirement has been held subject to limitations dictated by alleged criminal activity, and by the "reasonable" expectations of the officers under the circumstances. In People v. Superior Court (Kiefer), 3 Cal. 3d 807, 91 Cal. Rptr. 729 (1970), the Court stated that even when there is probable cause to arrest, a search for weapons must remain "reasonable in scope".

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Superior Court (Kiefer), 3 Cal. 3d 807, 91
Cal. Rptr. 129 (1970), the Court stated
that even when there is probable cause to
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"reasonable in scope".

"Just as the arresting officer in an ordinary traffic violation case cannot reasonably expect to find contraband in the offender's vehicle, so also he cannot expect to find weapons. To allow the police to routinely search only for weapons ... would likewise constitute an 'intolerable and unreasonable' intrusion into the privacy of the vast majority of peaceable citizens who yet, travel by automobile. It follows that a warrantless search for contraband must be predicated ... on specific facts or circumstances giving the officer reasonable grounds to believe that such weapons are present in the vehicle he has stopped." [3 Cal. 3d 829, 91 Cal. Rptr. at 744].

Indeed, very recently in California, the limitation of scope of search incidental to arrest articulated in Chimel v. Cassel,

"Just as the arresting officer in an ordinary traffic violation case cannot reasonably expect to find contraband in the offender's vehicle, so also he cannot expect to find weapons. To allow the police to routinely search for weapons... would likewise constitute an 'intolerable and unreasonable' intrusion into the privacy of the vast majority of peaceable citizens who travel by automobile. It follows that a warrantless search for contraband must be predicated... on specific facts or circumstances giving the officer reasonable grounds to believe that such weapons are present in the vehicle he has stopped." [1 Cal. 3d at 829, 51 Cal. Rptr. at 744].

Indeed, very recently in California, the limitation of scope of search incident to arrest articulated in Chimel v.

California (1969) 395 U.S. 752, 89 S. Ct. 2034 has been applied to searches of automobiles. (People v. Koehn, 102 Cal Rptr. 102, May 1972). These decisions dictate that a search without a warrant can be conducted in a non-emergency situation, only if the search coincides with a lawful arrest or detention and is restricted to the arrestee's person or area "within his immediate control" (395 U.S. at 762-3). Yet, under § 1357, no warrant is required, no probable cause, no lawful arrest and no restriction of scope of search. One has only to "look for" aliens, and the Fourth Amendment protections supported by the above decisional law, vanish.

Other cases have limited the use of "furtive gestures" as a basis for probable cause to search. (Gallik v. Superior Court of Santa Clara County, 5 Cal. App. 3d 862, 97 Cal Rptr. 693 (1971); People v. Cassel,

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Other cases have limited the use of
"infringe passenger" as a basis for probable
cause to search. Calix v. Superior Court
of Santa Clara County, 5 Cal. App. 3d 882,
57 Cal Rptr. 693 (1971); People v. Lasse

23 Cal App 3d 715, 100 Cal Rptr, 520 (1972). People v. Williams, 20 Cal App. 3d 590, 97 Cal. Rptr. 815 (1971). That limitation is meaningless if the probable cause requirement is abandoned.

Finally, the courts in California for example, have tried to put a halt to the more obvious abuses of the authority of the police to "inventory" the contents of automobiles lawfully in their custody pursuant to the removal and storage provisions of the vehicle code. [Mozzetti v. Superior Court, 4 Cal App. 3d 699, 94 Cal. Rptr. 412 (1971); see also, People v. Heredia, 20 Cal. App. 3d 194, 97 Cal. Rptr. 488 (1971) [Mozzetti rule not merely prospective in effect]; Virgil v. Superior Court, 268 Cal. App. 2d 127, 73 Cal. Rptr. 793 (1968)].

In Mozzetti, there was no arrest, nor probable cause. The court saw no rational

33 Cal App 3d 712, 100 Cal Rptr, 520 (1967)
People v. Williams, 20 Cal App, 3d 596,
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is abandoned.

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193 (1968).

In Mosses, there was no arrest, no
probable cause. The court saw no reason

grounds for diluting Fourth Amendment protection merely for "inventory" purposes.

The court in Koehn, quoted the following from Mr. Justice Stewart's opinion in Coolidge:

"...the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."

(Coolidge v. New Hampshire, supra, 91 S. Ct. 2022, 2035).

Following Mozzetti, the "inventory" may no longer serve as the catalyst disintegrating the Fourth Amendment protections. Unfortunately one such "talisman" remains: the word "alien". Petitioner strongly denies existence of any rationale for this exception. He rightfully demands an explanation before he submits to what can now only be termed a blatant disregard of his Fourth Amendment rights under the constitutionally invalid mandate

grounds for diluting Fourth Amendment
protection merely for "inventory" purposes.
The court in Roche, quoted the follow-
ing from Mr. Justice Stewart's opinion in

Coolidge:

"...the word 'automobile' is not a
tailor-made in whose presence the Fourth
Amendment fades away and disappears."

(Coolidge v. New Hampshire, supra,

31 S. Ct. 2022, 2032).

Following Mozert, the "inventory" may no
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ately such "tailor-made" remains: the word "auto-
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disregard of his Fourth Amendment rights
under the constitutionally invalid mandate

of 8 U.S.C. §1357.*

THIS COURT MUST IN ACCORD WITH ITS CONSTITUTIONAL DUTY TO ANNUUL STATUTES AND REGULATION VIOLATIVE OF THE CONSTITUTION, STRIKE DOWN THIS UNWARRANTED GOVERNMENTAL BID FOR LEBEN-DRACH AS IMPLEMENTED BY GOVERNMENTAL REGULA-TIONS RESCINDING THE SEARCH AND SEIZURE RIGHT OF OUR CITIZENS, DENYING THEM EQUAL PROTEC-TION OF THE LAWS, ABRIDGING THEIR RIGHT TO TRAVEL, COMpressing THEM INTO THE REFUGE OF MIDDLE AMERICA, DETERRING LAW ABIDING MIDDLE AMERICANS FROM SEEKING EMPLOYMENT OR ENJOYING VACATIONS NEAR OUR NATION'S BOUND-ARIES, AND OBSTRUCTING FREEDOM OF INTERSTATE

* The 9th Circuit Court of Appeals has it-
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III

THIS COURT MUST IN ACCORD WITH ITS CONSTITUTIONAL DUTY TO ANNUL STATUTES AND REGULATIONS VIOLATIVE OF THE CONSTITUTION, STRIKE DOWN THIS UNWARRANTED GOVERNMENTAL BID FOR LEBENSRAUM AS IMPLEMENTED BY GOVERNMENTAL REGULATIONS RESCINDING THE SEARCH AND SEIZURE RIGHT OF OUR CITIZENS, DENYING THEM EQUAL PROTECTION OF THE LAWS, ABRIDGING THEIR RIGHT TO TRAVEL, COMpressING THEM INTO THE REFUGE OF MIDDLE AMERICA, DETERRING LAW ABIDING MIDDLE AMERICANS FROM SEEKING EMPLOYMENT OR ENJOYING VACATIONS NEAR OUR NATION'S BOUNDARIES, AND OBSTRUCTING FREEDOM OF INTERSTATE COMMERCE.

It has been clear since Marbury v. Madison, 1 CRANCH 137 (1804) that Congress can neither make nor enforce a law, rule, or regulation which is counter to the United States Constitution. This principle is the bedrock of our form of Government, yet Congress and State legislatures and administra-

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It has been clear since Marbury v. Madison, 1 CRANCH 137 (1804) that Congress can neither make nor enforce a law, rule, or regulation which is contrary to the United States Constitution. This principle is the bedrock of our form of Government, yet Congress and State legislatures and administrators

the bounds of our Constitution. It is the Judiciary's duty to be watchful for citizen's constitutional rights. Boyd v. United States 116 U.S. 616, 6 S. Ct. 524 (1886). When a person brings a proper case complaining of infringements of constitutional rights, the judicial branch of our Government must ascertain the validity of suspect laws passed by our legislative bodies, and at least as great a duty exists when administratively passed regulations are challenged. Individuals must be protected from both willful and unwitting encroachment upon their constitutional rights. "This duty cannot be discharged as though it were a mere procedural formality." Von Moltke v. Gillies, 332 U.S. 78, 68 S. Ct. 316 (1948). It must be thoroughly and thoughtfully considered. Here, by the stroke of a pen, the Government has eliminated Fourth Amendment protections for a majority of our 200

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It must be thoroughly and thoughtfully
considered. Here, by the stroke of a pen,
the Government has eliminated Fourth Amend-
ment protections for a majority of our 300

million citizens. (See Appendix A). One of the laws here in question, 8 U.S.C. 1357 (a), allows searches of vessels and vehicles for aliens with no need of obtaining a search warrant and without even probable cause, as long as within a "reasonable distance" of an external boundary. Implementing this law is 8 C. F. R. 287.1(a) (2), which defines "reasonable distance" as 100 air miles from any external boundary. Recent cases have accepted these laws more by rote than by reason. An example is the pending case. ~~Negro~~ Here, the court must not only analyze the ends of the 8 U.S.C. 1357(a) and 8 C.F. R. 287.1(a)(2) but must also examine their means to determine if they comport with constitutional standards. ~~Arrest and~~ In similar legislation, 19 U.S.C. 482, Congress literally authorized searches for foreign contraband anywhere in the ~~about~~ United States without either a search ~~her~~ police cities of less than one-half

million citizens. (See Appendix A). One
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In similar legislation, 19 U.S.C. 482
Congress literally authorized searches for
foreign contraband anywhere in the
United States without either a search

warrant or probable cause. The courts, doing their duty, have understandably balked at such broad authorization and have required probable cause to search unless it is a border search. Cervantes v. United States (9th Cir. 1959) 263 F.2d. 800.

If these rules are upheld, the people of the following cities, Seattle, San Francisco, Los Angeles, San Diego, Phoenix, San Antonio, Houston, New Orleans, Miami, Baltimore, Philadelphia, Pittsburgh, New York, Buffalo, Cleveland, Columbus, Detroit and Washington, D. C.; (cities in excess of 500,000 people) plus the entire population of the states of Florida, Delaware, New Jersey, Connecticut, Rhode Island, Maine, New Hampshire, Vermont and Hawaii, 59 million people, can be stopped and their vehicles searched without probable cause, and as the law is stated, without any justification. If we were to further include cities of less than one-half

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at such broad authorization and have

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York, Buffalo, Cleveland, Columbus,

Detroit and Washington, D. C.; cities in

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Island, Maine, New Hampshire, Vermont and

Hawaii, 50 million people, can be stopped

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include cities of less than one-half

million people, we would learn that the preponderant majority of Americans are subject to the loss of their search and seizure rights under existing legislation. (See Appendix A).

The right to be free from unreasonable searches and seizures, is inextricably interwoven into the fabric of our society. Yet, the Government has arbitrarily chosen, 100 miles from an external boundary as a "no Fourth Amendment Rights" zone. In this zone, Government agents can take away Fourth Amendment protections when riding in vehicles. Chief Justice Taft in Carroll v. United States, 267 U.S. 132, 153-154, 45 S. Ct. 280, 285 (1925) said: "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding

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United States, 357 U.S. 172, 182-184, 45
S. Ct. 280, 282 (1957) said:

"It would be intolerable and
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mobile on the chance of finding

resale liquor, and thus subject all persons
lawfully using the highways to the
inconvenience and indignity of such
a search. But those lawfully within
the country, entitled to use the public
highways, have a right to free passage
without interruption or search unless
there is known to a competent official
authorized to search, probable cause
for believing that their vehicles are
carrying contraband or illegal
merchandise.. " [Emphasis added]

Furthermore, 8 U.S.C. 1357(a) and
8 C.F.R. 287.1(a)(2) read together, run
afoul of the Equal Protection provisions
of the Fifth Amendment. Distance from the
beach or any other external boundary
should not be a criterion for determining
the extent of one's constitutional rights.
The residents of Miami cannot be afforded
lesser constitutional rights than the

liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authority to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise..". (Emphasis added)

Furthermore, 8 U.S.C. 1257(a) and 8 U.S.C. 1257.1(a)(2) read together, run afoul of the Equal Protection provisions of the Fifth Amendment. Distance from the beach or any other external boundary should not be a criterion for determining the extent of one's constitutional rights. The residents of Miami cannot be afforded lesser constitutional rights than the

residents of Kansas City. It amounts to an "invidious discrimination" of the most rank sort. See e.g. McLaughlin v. Florida, 379 U.S. 184, 190, 194, 85 S. Ct. 283 (1964); Douglas v. California, 372 U.S. 353, 356, 83 S. Ct. 814 (1963); Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S. Ct. 110 (1942). These laws also inhibit the right to travel. Travel restrictions within the United States were struck down long ago. In Kent v. Dulles, 357 U.S. 116, 125-126, 78 S. Ct. 1113, 1118, (1958). Mr. Justice Douglas stated for this court:

"The right to travel is a part of the 'liberty' of which citizens cannot be deprived without the due process of law under the Fifth Amendment...In Anglo-Saxon Law, that right was emerging at least as early as the Magna Carta..Freedom of movement across frontiers in either

residents of Kansas City. It amounts to an

"arbitrary discrimination" of the most rank

sort. See e.g., McLaughlin v. Florida, 379

U.S. 184, 190, 194, 22 S. Ct. 183 (1944).

Poulos v. California, 372 U.S. 323, 356,

33 S. Ct. 814 (1953); Skinner v. Oklahoma,

316 U.S. 230, 241, 62 S. Ct. 117 (1942).

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early as the Magna Carta. Freedom of

movement across frontiers in either

direction, and inside frontiers as well, was a part of our heritage. ...travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

Aptheker v. Secretary of State, 378 U.S. 500, 84 S. Ct. 1659 (1964), Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271 (1965).

Mr. Justice Stewart reiterated the fundamental nature of the right in United States v. Guest, 383, U.S. 745, 757-758, 86 S. Ct. 1175, 1778 (1966):

"The constitutional right to travel.. occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

direction, and inside frontiers as well, was a part of our heritage. ... travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

Anderson v. Secretary of State, 378 U.S. 1067, 84 S. Ct. 1652 (1964), Nemel v. Alaska, 351 U.S. 1, 82 S. Ct. 1771 (1955).

Mr. Justice Stewart reiterated the fundamental nature of the right in United States v. Guest, 383, U.S. 745, 757-758, 85 S. Ct. 1175, 1778 (1966):

"The constitutional right to travel... occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."

In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Fourteenth Constitution." 314 U.S. 160, 62 S. Ct. 164. In the landmark decision of Shapiro v. Thompson, 394 U.S. 618, 629-630, 689 S. Ct. 1322, 1329 (1969), Mr. Justice Brennan declared for the majority: "This court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by our Chief Justice Taney in the Passenger Cases, 7 How. 283, 492, 12 L. Ed. 1702 (1849)." "recognize that freedom of travel,

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Cases, 7 How. 283, 49 U.S. 121, 23 L. Ed. 302 (1848).

Clearly in the present case, the government has unreasonably, and without justification, burdened the right to travel. See also Edwards v. California, 314 U.S. 160, 62 S. Ct. 164 (1941), Aptheker v. Secretary of State, 378 U.S. 500, 84 S. Ct. 1659 (1964), Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271 (1965). The regulations here in question will put a chill on the choice of where to travel. If every midwesterner feared the possibility of searches at any time without probable cause, he would certainly be deterred from traveling to or near any external boundary. "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures." Katz v. United States, 389 U.S. 347, 359, 88 S. Ct. 507, 515 (1967). It has therefore, been undeniably established that the right to travel is a "fundamental" constitutional right. We recognize that freedom of travel, by birth. Where is the "sudden danger?"

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Estabro v. California, 314 U.S. 160, 62 S.
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 376 U.S. 200, 84 S. Ct. 1552 (1964).
Jones v. Rank, 381 U.S. 1, 85 S. Ct. 1271
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 S. Ct. 207, 512 (1967). It has therefore
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...could justify the present restriction?
like freedom of speech, may be subject to
reasonable limitations as to time and place.
The government, if not the Court, may take

comfort in the fact that existence of a
"compelling governmental interest" necessary

to justify infringement of a fundamental
constitutional right finds precedent in the
notorious, if not celebrated case of

Korematsu v. United States, 323, U.S. 214,
65 S. Ct. 193 (1944). Though the Court

has been understandably reluctant to refer
to Korematsu, the case held that:

"The liberty of every American citizen
freely to come and go must frequently,
in the face of sudden danger, be
temporarily limited or suspended."

(323 U.S. at 231), See also Hirabayashi
v. United States, 320 U.S. 81, 63 S. Ct.

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for the internment of thousands of
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which could justify the present restriction? A rising crime rate? The war in Vietnam? Very obviously, no exigency exists as justification.

Further, Mr. Justice Roberts dissented in Korematsu from what he considered too broad a restriction on the right to travel. At least a temporal limitation was inherent in that situation. The right to travel under a literal reading of § 1357(a), on the other hand, is restricted indefinitely. The overbreadth of § 1357(a) and lack of a compelling governmental interest to justify the blatant infringement of the fundamental right to travel, demand that it be ruled unconstitutional.

This inhibiting of the right to travel also has interstate commerce implications. The chilling effect will dissuade people from traveling from mid-America states to border states, thus decreasing the flow

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for constitutional infringements of commerce and impairing the commercial viability of, for example, motels, restaurants, and gas stations along interstate routes. See Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 85 S. Ct. 348 (1964).

If the Government's contention is that the border is too difficult to police and therefore the inland check points are needed, then the regulation should surely be struck down. Inefficiency can never be traded off against constitutional rights. Furthermore, there is no showing that the checkpoint in question is essential to patrolling the California-Mexican border for aliens or contraband.

The potential for abuse is plain. By intoning the words, "I'm looking for aliens" immigration officials can vaporize Fourth Amendment rights. The court must thoroughly examine 8 U.S.C. 1357(a) and 8 C.F.R. 287.1

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In using the words, "I'm looking for all
immigration officials can authorize Fourth
Amendment rights. The court must therefore
examine 8 U.S.C. 1357(a) and 8 C.F.R. 28

(a) (2) for constitutional infringements.
If not, perhaps in a few years, 125 miles
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The blatant displacement of Constitutional rights caused by 8 U.S.C. 1357(a) and 8 C.F.R. 287.1(a) (2), and the paucity of compelling Governmental interests *ly submitted*, require invalidation of these two regulations and the reversal of Appellant's conviction.

John H. [illegible]
Lake Merritt

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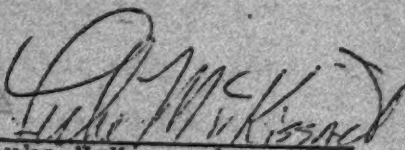
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Conclusion

Petitioner's conviction should be reversed.

Respectfully submitted,


Luke McKissack